

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
William EshlemanDEFENDANTS
Patrick Industries, Inc.(b) County of Residence of First Listed Plaintiff Lancaster
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Lancaster
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Samuel A. Dion, Esq.
1845 Walnut Street, Suite 1199
Philadelphia, PA 19103

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input checked="" type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

ADA

Wrongful termination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/06/2017

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

WILLIAM ESHLEMAN	:	
	:	
v.	:	NO.:
	:	
PATRICK INDUSTRIES, INC.	:	<u>JURY TRIAL DEMANDED</u>

CIVIL ACTION COMPLAINT

Parties

1. Plaintiff, Williams Eshleman, is an adult individual who at all times material to this action resided at and continues to reside at 121 East Cottage Avenue, Millersville, PA 17551.

2. Defendant, Patrick Industries, Inc., is a corporation with a place of business located 32 Eby Chiques Road, Mount Joy, PA 17552 and employs hundreds of people nationally.

Jurisdiction

3. This Court has jurisdiction over this matter pursuant to the Americans With Disabilities Act of 1990, 42 U.S.C. Section 12111 et seq. (hereinafter "ADA"). This Complaint has been filed within 90 days after issuance of a Notice of Right to Sue by the EEOC.

Facts

4. On July 16, 2013, plaintiff first became employed by defendant as a truck driver at defendant's facility in Mt. Joy, PA.

5. Between October 14, 2015 and December 14, 2015, plaintiff took medical leave to undergo surgery to remove a nodule from his left lung.

6. Plaintiff was able to return to work full duty on December 15, 2015.

7. Plaintiff thereafter took a brief medical leave between January 27, 2016 and January 31, 2016 for a severe upper respiratory infection.

8. Plaintiff returned to work full for defendant duty on February 1, 2016 by order of his physician.

9. On both February 1-2, 2016, plaintiff worked his full shift for defendant.

10. Plaintiff was also approved for two vacation days during his absence from work caused by the upper respiratory infection.

11. At the end of his shift on February 2, 2016, plaintiff's supervisor Leo informed plaintiff that he was being terminated due to "performance issues."

12. Plaintiff reminded Leo that Mr. Fisher (another supervisor) gave him a great performance evaluation at the beginning of January 2016 with all 4.5's and one 5 out of 5 in each category.

13. Leo falsely alleged that plaintiff's evaluation was a 2.9.

14. Leo also falsely accused plaintiff of not calling out sick between January 27-29, 2016.

15. These were the only reasons given to plaintiff for his termination on February 2, 2016.

16. After his termination, plaintiff learned that defendant claimed that he was terminated for "behavioral issues."

17. Defendant's shifting proffered reasons for plaintiff's termination are all false.

18. The true reason why plaintiff was terminated by defendant was because defendant wrongly regarded him as disabled.

19. Defendant and its agents wrongly believed that plaintiff was unreliable, a liability, and unable to perform a wide range of jobs based upon his recent history of illness-related absences between October 14, 2015 and February 1, 2016.

20. ADA case law since 1995 has indicated that it is a violation of the ADA to terminate an employee if the employer perceives that the employee is unreliable or undependable based upon his history of absences due to illness. See Young v. Bank of Boston, 1995 U.S. Dist. LEXIS 22075 at *3-*5 (D.Conn. 1995); Hicks v. The Tech Industries, 512 F. Supp. 2d 338 (W.D.Pa. 2007); and Adams v. Interarch, Inc., 2008 U.S. Dist. LEXIS 105864 (D.N.J. 2008).

21. 35. Defendant's actions violated the Americans with Disabilities Act (ADA) because plaintiff was discriminated against and terminated in substantial part because she was disabled and requested an accommodation for her disability.

22. Defendant is responsible for the actions of its agents because they were plaintiff's supervisors and they had the power to hire, fire.

23. Defendant and its agents undertook a course of conduct toward plaintiff and terminated his employment by solely because he was regarded as being disabled.

24. Plaintiff was subjected to humiliation, embarrassment, and mental anguish as a consequence of defendant's unlawful adverse employment action taken against plaintiff.

25. Plaintiff was suffered lost pay and other financial losses, and he was subjected to humiliation, embarrassment, and mental anguish as a consequence of defendants' termination of his employment.

COUNT 1– ADA

26. Plaintiff repeats paragraphs 1-25 as if more fully set forth herein.

27. By and through its conduct, defendant violated the ADA by intentionally discriminating against plaintiff and by terminating his employment because of his perceived disability.

WHEREFORE, plaintiff demands that judgment be entered in his favor on Counts 1 against defendant for lost pay, lost bonuses, lost benefits, other financial losses, compensatory damages for emotional pain and suffering, punitive damages, attorneys' fees, costs, interest, and any other relief that this Honorable Court deems to be fair and proper.

/s/ Samuel A. Dion

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/s/ Richard B. Bateman, Jr.

Date: September 5, 2017

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